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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,049	09/22/2003	Julie Theel	83359.0002	7272
30076 7590 01/06/2009 STEPTOE & JOHNSON LLP 2121 AVENUE OF THE STARS SUITE 2800 LOS ANGELES, CA 90067				
EXAMINER				
HYLINSKI, ALYSSA MARIE				
ART UNIT		PAPER NUMBER		
3711				
MAIL DATE		DELIVERY MODE		
01/06/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/668,049

Applicant(s)

THEEL, JULIE

Examiner

Alyssa M. Hylinski

Art Unit

3711

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-62 is/are pending in the application.
- 4a) Of the above claim(s) 31-40 and 48-54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-30, 41-47 and 55-62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/808)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 21-25, 28-29, 41-44 and 46-47 rejected under 35 U.S.C. 103(a) as being unpatentable over Shamitoff (6887120). Shamitoff discloses a toy that could be used by a house pet such as a dog having a main member (112) with an exterior surface (Fig. 2) and an interface surface (128) wherein the main member exterior surface could be non-destructively gripped by a house pet using its mouth and paws since it can be constructed using a plush material or a durable plastic vinyl covering (column 4 lines 51-55). The main member interface surface includes a first portion of a snap connector (128). The toy further includes a secondary member (108) with an exterior surface that could also be non-destructively gripped by a house pet using its mouth and paws since it can also be constructed using a plush material or a durable plastic vinyl covering (column 4 lines 51-55). The secondary member has an interface surface (126) that includes a second portion of a snap connector that can mate with a corresponding first portion of the snap connector on the main member interface surface (Figs. 1-2). The main and secondary members are capable of being shaped and sized to prevent swallowing by a house pet (Fig. 2). The interface surfaces of the main member and the interface surfaces of the secondary members are attachable by a human to create an

attached toy state via the snap connector which is capable of being non-destructively detached by a house pet using its mouth and paws to create a detached toy state by disconnecting the snap connectors which could then be reattached by a human after being separated (Figs. 1-2). The exterior surfaces main and secondary members would be sufficiently durable to withstand biting and chewing by a house pet due to its vinyl covering. The interface surfaces of the main member and the secondary members are attached securely enough via the snap connectors to require an amount of force to detach the secondary member from the main member (Figs. 1-2). The first portion of a snap connector includes a socket portion (134) and the second portion of a snap connector includes a mating protrusion (130), where the first portion of the snap connector is shaped and sized to snap onto the second portion of the snap connector attaching the main member to the secondary member (Figs. 1-3). The positioning of the snap connector portions can be reversed (column 4 lines 17-24) such that the first portion of the snap connector includes a protrusion (130) and the second portion of the snap connector includes a mating socket portion (134), where the first portion of the snap connector is shaped and sized to snap into the second portion of the snap connector attaching the main member to the secondary member (Figs. 1-3). In regard to the main and secondary members being adapted to teeth of a dog so as to withstand biting, chewing and rending, the examiner notes that that mere selection of known materials on the basis of suitability for the intended use would be entirely obvious. See *in re Leshin*, 125 USPQ 416 (CCPA 1960). Therefore, it would have been obvious to one of ordinary skill in the art to provide Shamitoff with a material adapted for teeth of a

dog so as to withstand biting, chewing and rending in order to use known materials suitable for the intended use. Also in regard to the main and secondary members being adapted to the teeth of a dog in terms of size, the examiner notes that a mere change in the size of a component would be obvious to one of ordinary skill in the art. *See In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

3. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shamitoff and Russell (5195917). Shamitoff discloses the basic inventive concept substantially as claimed with the exception of the main and secondary members being attached using hook and loop fasteners. Russell discloses a figure toy having separable parts held together with hook and loop fasteners (column 1 lines 27-37). It would have been obvious to one of ordinary skill in the art from the teaching of Russell to have the parts connected with hook and loop fasteners since it would provide an easy and simple means of connecting and disconnecting a toy figure. Furthermore, since both references teach methods for connecting elements of a toy, it would have been obvious to one skilled in the art to substitute one element for the other in order to achieve the predictable result of connecting the elements in a non-permanent manner.

4. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shamitoff and Alonso (3375604). Shamitoff discloses the basic inventive concept substantially as claimed with the exception of the main and secondary members being attached using magnets. Alonso discloses a figure toy having separable parts held together with magnetic means (abstract). It would have been obvious to one of ordinary skill in the art from the teaching of Alonso to have the parts connected with magnets

since it would provide an easy and simple means of connecting and disconnecting a toy figure. Furthermore, since both references teach methods for connecting elements of a toy, it would have been obvious to one skilled in the art to substitute one element for the other in order to achieve the predictable result of connecting the elements in a non-permanent manner.

5. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shamitoff and Essebaggers (5108100). Shamitoff discloses the basic inventive concept, substantially as claimed, with the exception of a cord connecting the interference surfaces of the members. Essebaggers discloses connection elements having interface surfaces (Fig. 6) for connecting the elements together (column 2 lines 27-32) connected by a cord (Fig. 5). It would have been obvious to one of ordinary skill in the art from the teaching of Essebaggers to connect the elements of Shamitoff with a cord in order to ensure that the elements remain together and the device will stay complete (column 2 lines 21-26). It would have been obvious to have the cord connecting at the interfacing surfaces, since such a modification would involve a mere rearrangement of parts. A rearrangement of parts is generally recognized as being within the level of ordinary skill in the art. See *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950).

6. Claims 45, 58 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shamitoff. The references disclose the basic inventive concept, with the exception of the toy being constructed of rubber or polyethylene material. The examiner notes that mere selection of known materials as recited in claims 45, 58 and 62 on the basis

of suitability for the intended use would be entirely obvious. *See in re Leshin*, 125 USPQ 416 (CCPA 1960). Therefore, it would have been obvious to one of ordinary skill in the art to provide Shamitoff with the materials recited in the claims in order to use known materials suitable for the intended use.

7. Claims 55-57 and 59-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shamitoff. Shamitoff discloses the basic inventive concept, substantially as claimed with the exception of disclosing the size of the components as to whether it could prevent swallowing by a large dog. It would have been an obvious matter of design choice to make the device sized so as to prevent swallowing by a large dog, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *See In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

Response to Arguments

8. In regard to Applicant's arguments that changing the size or material used in the Shamitoff reference would change the operation of the device, the examiner notes that changing the material or size of the components would in no way hinder the ability of the Shamitoff reference to function as a toy with a main member and secondary members that can be repeatedly attached and detached from one another, and that modifications with regard to materials and size have long been held to be within the level of ordinary skill in the art.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alyssa M. Hylinski whose telephone number is 571-272-2684. The examiner can normally be reached on M-F (8-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AMH
/Gene Kim/
Supervisory Patent Examiner, Art Unit 3711